

APPEAL NO. 040795
FILED MAY 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 11, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____. The claimant appealed, disputing the determination that she did not sustain a compensable injury and the hearing officer's findings that the claimant's work for the employer was not shown to be repetitive or traumatic to the upper extremity or neck, and that the claimant's work activities did not aggravate or enhance the claimant's diagnosed carpal tunnel syndrome (CTS) or cervical neuritis. The respondent (self-insured) urges affirmance of the disputed determination and findings.

DECISION

Affirmed.

Conflicting evidence was presented on the issue of whether the claimant sustained a repetitive trauma injury as defined by Section 401.011(36). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer was not persuaded by the evidence that the claimant's work activities were sufficiently repetitive to cause CTS and concluded that she did not sustain a compensable injury or have disability. Nothing in our review of the evidence indicates that the hearing officer's compensability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant argues that the hearing officer erred in commenting on evidence not in the record. In his Statement of the Evidence the hearing officer referred to a table of desirable weights contained in the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), noting that the claimant's weight as listed in the medical records in evidence based on her height put her outside the desirable weight listed. While we agree that it was improper for the hearing officer to refer to the AMA Guides in this instance, we do not find it to be reversible error. The hearing officer specifically found that the claimant's work for the employer was not shown to be repetitive or traumatic to the upper extremity or neck.

The claimant additionally argues that the hearing officer erred by basing his opinion on possibility, speculation, or guess in the medical literature introduced by the

self-insured. We note that the record reflects no objection was made by the claimant to the admission of the exhibits introduced by the self-insured and admitted into evidence at the CCH. The hearing officer, as the sole judge of the weight and credibility to be given to the evidence, was acting within his province in resolving the conflicts and contradictions in the evidence in favor of the self-insured. Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
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AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge